

# Part 10

# Procurement and Contract

# Rules

## Contents

### Section A – General

1.	<u>Introduction</u>	3
2.	<u>Objects</u>	4
3.	<u>Principles</u>	4
	<u>Schedule 1 - Definitions</u>	6

### Section B – Procurement Procedure

4.	<u>Planning each procurement</u>	9
5.	<u>Responsibilities of the Head of Procurement</u>	9
6.	<u>Procurement Procedures</u>	9
7.	<u>Form of contract and tender documentation</u>	10
8.	<u>Receiving and opening Tenders</u>	10
9.	<u>Awarding contracts and audit trails</u>	10
10.	<u>Contracts to be executed under seal</u>	11

### Section C – Contract Maintenance, Monitoring and Administration

11.	<u>General</u>	12
12.	<u>Extensions to contracts and framework agreements</u>	12
13.	<u>Variations to contracts</u>	12
14.	<u>Exceptions to these rules</u>	13
15.	<u>Partnerships and Grants</u>	14

# PART 10

## PROCUREMENT AND CONTRACT RULES

### SECTION A: GENERAL

#### 1. Introduction

- 1.1 These Procurement and Contract Rules (the “Rules”) are the standing orders which apply to the acquisition of all supplies, services and works by or on behalf of the council. This includes council controlled schools and where the council acts as lead commissioner on behalf of a third party using external funds.
- 1.2 These Rules apply to the whole lifecycle of the procurement process, from initial concept to the end of an asset’s useful life or the end of the contract liability period.
- 1.3 These Rules are divided into Sections A, B and C:
  - 1.3.1 Section A (“General”) sets out the Objects and Principles of these Rules;
  - 1.3.2 Section B (“Procurement Procedure”) sets out the rules for planning a Procurement and the procedure which must be followed for every Procurement up to signature of the relevant contract; and
  - 1.3.3 Section C (“Contract Maintenance, Monitoring and Administration”) sets out the rules for managing the relevant contract until termination or expiry together with other administration matters.
- 1.4 These Rules must be read in conjunction with the Procurement Manual, an online toolkit which gives detailed instructions and guidance in their implementation. The Procurement Manual will be updated from time to time and officers must always refer to the latest information as published on the Intranet.
- 1.5 These Rules do not apply to:
  - 1.5.1 Contracts of employment; or,
  - 1.5.2 Contracts that relate solely to the purchase or acquisition of land; or,
  - 1.5.3 contracts awarded by schools which are outside the control of the council such as academies and foundation schools, or
  - 1.5.4 Investment Manager contracts awarded by the Wiltshire Pension Fund Committee
- 1.6 A list of the definitions used in these Rules is given at Schedule 1 attached to this

## **2. Objects**

2.1 These Rules have three objects:

- 2.1.1 To deliver Best Value;
- 2.1.2 To manage and reduce the council's corporate risk;
- 2.1.3 To ensure accountability for all procurement decisions.

## **3. Principles**

3.1 It is the responsibility of the Directors to ensure that the purchase of goods, services and works comply with:

- 3.1.1 English law;
- 3.1.2 The Public Contracts Regulations (Utilities Contract Regulations and Concessions Contract Regulations) that are currently enforced;
- 3.1.3 The Council's Constitution including these Procurement and Contract Rules, Financial Regulations and Financial Procedure Rules (Part 9);
- 3.1.4 The Procurement Manual;
- 3.1.5 Compliance with the council's decision-making process.

3.2 Whether or not a Procurement is subject to the EU Regulations, it must be conducted in accordance with the basic EU Treaty Principles. In particular, this means all Procurements must be carried out in a fair, open and transparent way.

3.3 Any change to the relevant English or European law must be observed until these Rules are revised. If these Rules or the Procurement Manual conflict in any way with English law or European law in force in England then that legislation takes precedence.

3.4 The strategic advice of Legal Services and the Strategic Procurement Hub and accountancy must be sought during the earliest stages of planning any Procurement. See further Section B of these Rules.

3.5 All Procurements must comply with the Best Value processes set out in the Procurement Manual.

3.6 Each Director shall:

- 3.6.1 be responsible for all Procurements undertaken for his or her service area;
- 3.6.2 ensure that Best Value is achieved in all Procurements for his or her service area;
- 3.6.3 ensure that during the earliest stages of planning any Procurement for his or her service area:
  - the strategic advice of Legal Services, Accountancy, Human Resources and the Strategic Procurement Hub is sought; and
  - where appropriate, TUPE is considered and the Wiltshire Pension Fund consulted,

- 3.6.4 assess the ability to join up spending / contracts across other service areas to secure efficiencies and value for money;
  - 3.6.5 implement and operate a Scheme of Sub-delegation for his or her service area;
  - 3.6.6 in conjunction with the Strategic Procurement Hub, Accountancy and Legal Services, ensure that training on these Rules and the Procurement Manual is provided to Budget Managers and Commissioning Officers in accordance with the Procurement Manual;
  - 3.6.7 ensure that all Procurements for his or her service area are conducted in a fair, open and transparent way;
  - 3.6.8 ensure that Budget Managers in his or her service area comply with the duties listed at rule 3.8 below;
  - 3.6.9 ensure that Commissioning Officers in his or her service area comply with the duties listed at rule 3.9 below.
- 3.7 Each Budget Manager shall for all Procurements within his or her remit:
- 3.7.1 ensure compliance with these Rules, the Procurement Manual, the Wiltshire Council Financial Regulations and Financial Procedure Rules and EU Regulations (where applicable);
  - 3.7.2 ensure that the Best Value processes set out in these Rules and the Procurement Manual are achieved;
  - 3.7.3 ensure that only standard documentation or documentation approved by Legal Services is used in accordance with rule 7 below;
  - 3.7.4 operate within an effective check and challenge system and in line with the Behaviours Framework;
  - 3.7.5 ensure that the requirements from the Strategic Procurement Hub to provide information and documentation for the Corporate Contracts Register set out in these Rules are complied with in a timely manner.
- 3.8 Commissioning Officers must comply with these Rules and the Procurement Manual.
- 3.9 A successful challenge made under the community right to challenge set out in Part 5 of the Localism Act 2011 will trigger the procurement processes set out in these Rules.
- 3.10 The council must comply with its obligations and duties in respect of State Aid in its commercial arrangements with third parties.

## Schedule 1 – Definitions

In these Rules, the following words and phrases have the following meanings:

<b>Behaviours Framework</b>	The council's set of core behaviours which define how officers are expected to carry out their roles
<b>Best Value</b>	The optimum combination of whole life cost and benefits to meet the council's requirements, and includes consideration of social responsibility, equality, economic factors and sustainability
<b>Budget Manager</b>	An officer with budgetary responsibility for the spend relating to a Procurement
<b>Contractor</b>	Provider contracted to furnish supplies or undertake works
<b>Commissioning Officer</b>	An officer with strategic responsibility for commissioning a service
<b>Contract Management</b>	The administration of a completed contract by council officers to include ensuring compliance with its terms and conditions and implementation of any required variation
<b>Corporate Contracts Register</b>	The central repository of (i) key contract information as required under the Transparency Act
<b>EU Regulations</b>	The <a href="#">Public Contracts Regulations 2015</a> , <a href="#">Concessions Contracts Regulations 2016</a> and <a href="#">Utilities Contracts Regulations 2016</a>
<b>EU Threshold</b>	A financial threshold for supplies, services or works above which the EU Regulations apply, where EU Threshold is used in these rules unless specifically stated it shall be the threshold for supplies and services.
<b>Exemption</b>	Has the meaning given in rule 14
<b>Financial Regulations</b>	The Financial Regulations set out in the council's constitution as updated from time to time, which provide financial controls around commitments including contracts
<b>Framework Agreement</b>	An agreement which allows the council to call-off from a supplier a range or pre-defined supplies or services. Each call-off constitutes a standalone contract made on the terms and conditions of the Framework Agreement
<b>Grant</b>	Has the meaning given in Protocol 8 ("Wiltshire Council Partnership Protocol") of the constitution as updated from time to time

<b>Invitation to Tender (ITT)</b>	An invitation to tender documents in the form required by these Rules
<b>OJEU</b>	The Official Journal of the European Union
<b>Partnership</b>	Has the meaning given in Protocol 8 (“Wiltshire Council Partnership Protocol”) of the constitution as updated from time to time
<b>Procurement</b>	The acquisition on behalf of the council of supplies, services or works of any value or type to include the entire process from initial planning to the end of the contract liability period or the end of an item’s useful life
<b>Procurement Manual</b>	The council’s online Procurement Manual as updated by the Head of Strategic Procurement from time to time and published on the Intranet
<b>Procurement Plan</b>	The schedule demonstrating a minimum of 12 months’ forward planning of Tender Level Procurements for each service area, to be created and maintained in accordance with the Procurement Manual
<b>Purchase Order</b>	An order detailing the products or services required by the council. Sending a Purchase Order to a supplier constitutes a legal offer by the council to buy products or services. Acceptance of a Purchase Order by a supplier usually forms a one-off contract between the council and the supplier, so no contract exists until the Purchase Order is accepted
<b>Regulation 84 Evaluation Report</b>	Report recommending the award of a contract following a procurement process (Template held by SPH)
<b>Service’s Responsible Officer</b>	The Officer responsible for the commissioning and delivering the outcomes from the procurement process
<b>Rules</b>	These Procurement and Contract Rules
<b>Scheme of Sub-delegation</b>	Delegation by Directors to officers in their service areas of the authority to exercise on their behalf powers delegated to them under Part 3B of the constitution as updated from time to time
<b>Sourcing Plan</b>	Required for all over EU Threshold tenders which lays out procurement options and recommended approach which must be approved by the Head of Procurement or their Nominee
<b>SPH</b>	Strategic Procurement Hub, central procurement team

<b>Tender</b>	A supplier's formal written offer made in competition to supply specified supplies or services or carry out specified work at a stated cost or rate, made in response to an Invitation to Tender
<b>Tender Level Procurement</b>	Expenditure which exceeds the EU Regulation thresholds at which an advert must be placed in the Official Journal of the European Union

REVISED PART 10



# **PART 10**

## **PROCUREMENT AND CONTRACT RULES**

### **SECTION B: PROCUREMENT PROCEDURE**

#### **4. Planning each Procurement**

- 4.1 Save where an Exemption is granted under rule 14 below, every Tender Level Procurement or complex or resource intensive procurement below tender level must be planned in accordance with these Rules and the Procurement Manual.
- 4.2 The Procurement Plan is the schedule demonstrating a minimum of 12 months' forward planning of such Procurements for each service area, to be created and maintained in accordance with the Procurement Manual.
- 4.3 Unless there is a clear corporate benefit of procurement, for example facilities management, each Director will be responsible for the Procurement Plan for his or her service area.
- 4.4 Each Budget Manager must ensure that his or her Procurements are represented in the Procurement Plan as soon as reasonably practicable in order to ensure timely consideration of the Procurement procedure which must be followed. They must also agree with Accountancy, before a Procurement Plan is submitted, that the council has the funds and other resources available to meet all its obligations under any contract(s) that may result. This includes having sufficient non-pay budget provision in year and future years. The level of contracted work will then be driven by the ability to afford a contract as approved by accountancy. The award will also consider the value for money of the tenders and financial sustainability of the contract

#### **5. Responsibilities of the Head of Procurement**

- 5.1 To ensure procurement process is followed and that Sourcing Plans and Regulation 84 Reports are prepared and approved in accordance with the Rules
- 5.2 Regularly review procurement governance, considering any relevant audit reports, changes in external regulations, laws, views from legal and accountancy teams and Council Strategy.
- 5.3 To ensure all procurement related Cabinet Reports are reviewed by the Head of Procurement and approved by the Director for Finance and Procurement prior to submission to the Cabinet.

#### **6. Procurement Procedure**

- 6.1 The procurement procedure to be taken is dependent on the estimated value of the supplies, services, or works to be provided. Full details of the processes and related information are given in the flow charts in Procurement Manual.

6.2 The value of the contract is the total value of the contract over its full duration including any extensions. Where the contract term is indeterminate or indefinite the value will be 48 times the monthly cost. When estimating the total value of a contract over its term, including extensions, all elements of cost must be considered not just the invoice value to be paid for the supplies, services or works.

## **7. Form of Contract and Tender Documentation**

7.1 All Procurements, regardless of value, must either:

7.1.1 use the council's appropriate un-amended model contract available on the Intranet as updated from time to time; or,

7.1.2 be referred to Legal Services to review the proposed contract or produce a new contract as appropriate.

7.2 In addition to the requirements of rule 7.1 all Procurements must either:

7.2.1 use the SAP Purchase Order procedure; or,

7.2.2 the Form of Agreement for low value one-off procurement of supplies and services; or,

7.2.3 use the council's un-amended standard tender templates which are available on the Intranet as updated from time to time; or,

7.2.4 be referred to the Strategic Procurement Hub to review the proposed tender documentation in conjunction with Legal Services.

7.3 Legal Services shall in conjunction with the Strategic Procurement Hub keep current and formally review all model contracts at least annually.

7.4 Contract Managers must provide relevant information required and register contract details on the corporate Contracts Register.

7.5 The Strategic Procurement Hub shall in conjunction with Legal Services review all standard tender templates at least annually.

7.6 Where there is an existing, appropriate authorised contractual arrangement this must be used unless a business case led by the relevant Officer in the Strategic Procurement Hub is properly approved.

## **8. Receiving and Opening Tenders**

8.1 All tenders must be received and opened in accordance with the details set out in the Procurement Manual.

## **9. Awarding Contracts and Audit Trails**

9.1 The results of any evaluation process must be recorded in writing by the Officer in the Strategic Procurement Hub responsible for leading the Procurement.

- 9.2 Any Officer awarding a contract must have sought confirmation from accountancy that the council has the funds available to meet all its financial obligations within the service AND under the contract prior to signature.
- 9.3 Commissioning Officers must be aware that the placing of any business with a third party constitutes a contractual commitment which must comply with these Rules. Placing an order off an approved contract may be undertaken by Officers with appropriate delegated budgets where those orders are placed against existing contracts based on pre-agreed terms and pricing. If any negotiations on price or changes to terms and conditions are required to place an order an Officer in the Strategic Procurement Hub must be contacted to determine how to proceed.
- 9.4 Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of this Constitution) and subject to rule 9.6 below, the authority to approve the award of contracts as a result of a procurement exercise is delegated to Directors (and their nominees) in accordance with the Scheme of Delegation.
- 9.5 Subject to the authority to award contracts being granted as per paragraph 9.4 and 9.6 these contracts may only be executed under Seal as per Rule 10 or be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation):
- 9.5.1 Solicitor to the Council for all contracts, or,
  - 9.5.2 The Director of Finance and Procurement.
- 9.6 Cabinet approval must be obtained for any contract (or programme) which:
- 9.6.1 Involves a key decision under this Constitution (see Part 1 paragraph 4.2.7)
  - 9.6.2 exceeds an annual value of £1 million or the total contract value exceeds £4million including any optional extension period;
  - 9.6.3 involves the transfer of 50 or more employees in or out of the council; or
  - 9.6.4 relates to a matter which is commercially, politically or strategically sensitive.
- 9.7 The legal requirements for issuing contract award notices must be followed.

## **10. Contracts to be executed under Seal**

- 10.1 Where a contract either:
- 10.1.1 Exceeds £1m in value; or,
  - 10.1.2 Is considered to be of a strategically important or politically sensitive nature; or,
  - 10.1.3 Where the extended limitation period of 12 years would be of value,

the contract must be executed under seal, unless advised otherwise by Legal Services.

# PART 10

## PROCUREMENT AND CONTRACT RULES

### SECTION C: CONTRACT MAINTENANCE, MONITORING AND ADMINISTRATION

#### 11. General

11.1 Budget Managers, Commissioning Officers and those managing contracts shall observe the contract management, supplier management, set out in the Procurement Manual.

#### 12. Extensions to contracts or framework agreements

12.1 The duration of a contract or Framework Agreement may only be extended if provision for that extension has been included in the terms of the contract or Framework Agreement.

12.2 The duration of Tender Level Procurements awarded under the EU Regulations may only be extended if provision for that extension was identified in the original OJEU Notice.

12.3 An extension should not be made where it would have the effect of changing the fundamental nature of the original contract and in no circumstances should an extension be made to a contract that has the effect of increasing the contract to a value over the EU Thresholds in force at that time.

12.4 The advice of the lead Officer in the Strategic Procurement Hub and Legal must be sought in relation to any proposals to extend a contract, even if a contractual option exists to explore if best value is offered from that option. This advice must be sought in an appropriate time period that would allow a new procurement to be undertaken if the advice is that the contract should not be extended.

12.5 All extensions must be fully documented and the signatories of the formal extension documents shall be Legal Services or as specified within Rule 9.5.

12.6 Cabinet approval must be obtained for any extension where the decision falls under the criteria for a key decision under the Constitution.

12.7 Where an extension is not provided for under the existing contract then the request to extend will need to follow the extraordinary exemption route, unless the total value of the contract including extensions is less than the EU Threshold which case it will be treated as a normal exemption.

#### 13. Extensions to contracts or framework agreements

13.1 In any case where a variation means that the value of a contract would exceed the relevant EU Threshold, or where there is any material change to the

contract, the contract must be treated as a new Procurement under these Rules.

- 13.2 All variations to contracts must be fully documented, whether they have a financial impact or not, and the signatories of the variation documents shall be Legal services or the same officers at 9.5.
- 13.3 Any variation resulting in additional spend above the budgeted contract level will need approval in accordance with the Financial Regulations and must be funded before a decision to vary is taken.
- 13.4 Cabinet approval must be obtained for any variation where the decision falls under the criteria for a key decision under the Constitution.

#### **14. Exceptions to these rules**

14.1 These Rules apply to all supplies, services and works purchased by the council. However, subject to rule 14.2, a formal exemption to the requirements of one or more of these Rules may be considered where the Procurement in question is not subject to the EU Regulations or existing legislation i.e. for procurement where the RfQ procedure may be used. Guidance on the exemption process is in the Procurement Manual.

14.2 Formal exemptions cannot be used to remove the requirement:

14.2.1 to use un-amended model contracts and standard tender templates, or to seek the advice of Legal Services and the Strategic Procurement Hub where the standard documentation must be amended, in accordance with rule 7 above;

14.2.2 to seek the advice of Legal Services and the Strategic Procurement Hub for all Tender Level Procurements.

14.3 The Strategic Procurement Hub may grant formal exemptions which fulfil the following strict criteria (“Exemptions”):

14.3.1 Works orders placed with utility companies, e.g. for re-routing cables or pipework. The term utilities does not include telecommunications.

14.3.2 Genuine emergencies – Critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from a hitherto unforeseen ‘catastrophic’ event or incident such as fire, bombing, flooding, major landslide etc. Any contract entered into by the council under this exemption must not be for a term of more than 6 months.

14.3.3 Collaborative/Joint Purchasing – Where another authority/public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of Best Value and other applicable legislation including, where relevant, the EU Procurement Directives.

14.3.4 Sole source of supply - Where suitable supplies or service are genuinely only available from one supplier (e.g. if patent, copyright or other exclusive design rights exist). Similarly, for any highly

specialised/niche services where, for all practical purposes, no realistic alternative source of supply exists. Exemption requests made on this basis will be tested by the Strategic Procurement Hub using sourcing tools.

14.3.5 Urgent situations not of the council's own making – The urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of 'time is of the essence'. However, urgency arising through problems of the council's own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself justify exemption. Any contract entered into by the council under this exemption must not be for a term of more than 6 months. Where extensions of contracts are entered into without an Opportunity Assessment, the Strategic Procurement Hub will seek a temporary extension term in order to allow a full Opportunity Assessment to take place as soon as reasonably practicable. The avoidance of Opportunity Assessments will be exceptional.

14.3.6 Reasons of compatibility - If compatibility with existing supplies, equipment or services is essential and where they cannot be sourced from another supplier (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics, etc.

14.3.7 Procurements of a value of less than EU Threshold or extensions to contracts where the total value of the contract including extensions is less than the EU Threshold.

#### Extraordinary Exemptions

- 14.4 Any Exemption which does not fulfil the strict criteria of rule 14.3 will be an "Extraordinary Exemption".
- 14.5 Only the Head of Strategic Procurement in conjunction with the Solicitor to the Council (or nominee) may grant an Extraordinary Exemption.
- 14.6 Directors must ensure that the information submitted in all Exemption Request Forms and Extraordinary Exemption Request Forms for his or her service area is correct.
- 14.7 The procurement may proceed only after the notification of approval is received by the Commissioning Officer.
- 14.8 All Exemption requests which would contravene English law or European law in force in England will be rejected.
- 14.9 If the Exemption is approved, the application form will be endorsed and returned to the relevant Commissioning Officer who must enter the contract on to the Corporate Contracts Register in accordance with rule

7. A copy of the Exemption will be retained by the Strategic Procurement Hub.

## Procedure

14.10 Exemption requests made for one of the reasons under rule 14.3 must be submitted to [ProcurementUnit@wiltshire.gov.uk](mailto:ProcurementUnit@wiltshire.gov.uk). It is recommended that the SPH are engaged to support the development of the exemption. Wherever possible, completed Exemption Request Forms should be scanned and submitted by email.

14.11 An Exemption will be either:

- 14.11.1 approved by the Strategic Procurement Hub, registered and confirmed with the requesting Commissioning Officer;
- 14.11.2 held pending a request for further information (where appropriate);
- 14.11.3 rejected stating the reasons why; or
- 14.11.4 referred to Cabinet for determination.

14.12 Extraordinary Exemption requests must be submitted to the Head of Strategic Procurement ("Extraordinary Exemption Request Form"). Extraordinary Exemption Request Forms must include a full business case and must be countersigned by the relevant Service Director. Wherever possible, completed Extraordinary Exemption Request Forms should be scanned and submitted by email.

14.13 An extraordinary exemption will be either:

- 14.13.1 Approved by two of the following three designated officers:
  - The Head of Procurement and one of either
  - The Solicitor to the Council (or nominee); and
  - The Section 151 Officer, and registered and confirmed with the requesting Commissioning Officer
- 14.13.2 Held pending a request for further information (where appropriate) and then dealt with in accordance with rule, 14.11.1, 14.11.3 or 14.11.4.
- 14.13.3 Rejected stating the reasons why; or,
- 14.13.4 Referred to Cabinet for determination, and in the event of Cabinet approval, registered and confirmed in accordance with rule 14.11.1.

14.14 Within 10 working days of an Extraordinary Exemption approval made under rule 14, details of the approval decision and the attendant business case will be:

- 14.14.1 Notified to the relevant Cabinet Member; and,
- 14.14.2 published on the Intranet, and the approval decision will normally be made available to the public, except where the notification of approval states that this would not be appropriate for legal reasons.

## **15. Partnerships and Grants**

15.1 These Rules do not apply to Partnerships and Grants that are approved under the relevant policies and procedures.